

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings
Under Chapter 13

KEVIN D. PORTER
VALERIE M. PORTER

Case No. 01-41950

Debtor(s).

OPINION

This matter is before the Court on the debtors' objection to the claim of Onyx Acceptance Corporation ("Onyx"), which is secured by the debtors' vehicle. Onyx asserts that the debtors' objection, which was filed almost a year and a half after Onyx's claim was filed and subsequent to plan confirmation, comes too late. Accordingly, Onyx urges the Court to overrule the debtors' objection and allow its claim as filed.

The facts are not in dispute. The debtors' Chapter 13 plan was filed in September 2001 and proposed to pay secured creditors the value of their collateral. The plan specifically mentioned Onyx as such a creditor and estimated its secured claim at \$20,450.00. On November 13, 2001, Onyx filed a proof of claim in the amount of \$26,263.28 and asserted that its claim was fully secured by a lien on the debtors' 1999 Chevrolet truck. The debtors did not object to Onyx's claim, and the debtors' plan was confirmed on December 13, 2001.

Subsequently, on May 28, 2003, the debtors filed their

objection to Onyx's claim. The debtors maintain that the value of their vehicle is \$19,300.00, rather than \$26,263.28 as stated in Onyx's proof of claim. Onyx, however, argues that the debtors have waited too long to object to its claim. Onyx asserts that, under the Seventh Circuit's decision in Adair v. Sherman, 230 F.3d 890, 894-95 (7th Cir. 2000), the debtors were required to object prior to confirmation to any claims that had been filed at that time, because the confirmation order fixes the parties' rights and is res judicata as to matters that were or could have been determined at confirmation.

Section 502(a) of the Bankruptcy Code provides that "a claim or interest, proof of which is filed . . . , is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 506(a).¹ While a debtor must object to prevent a claim from being allowed as filed, there is no statute or rule that provides a deadline for filing such an objection. Under Bankruptcy Rule 3002, a creditor may file a proof of claim up to 90 days after the first date set for the 341 meeting of creditors. See Fed. R. Bankr. P. 3002. Because confirmation generally takes place well before the time for filing claims has elapsed, debtors rarely object to

¹ Section 502(a) is implemented by Bankruptcy Rule 3001(f), which provides that "a proof of claim [properly executed and filed] shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f).

claims prior to confirmation. See In re Johnson, 279 B.R. 218, 221 (Bankr. M.D. Tenn. 2002). Indeed, in the absence of a provision limiting the time to object to claims and presuming no equitable considerations prevent it, debtors may object to a creditor's proof of claim anytime before the order of discharge is entered at the conclusion of the case. See In re Barton, 249 B.R. 561, 565-66 (Bankr. E.D. Wash. 2000).

In this case, Onyx argues that a different result should obtain based on the court's ruling in Adair v. Sherman. Onyx points out that its proof of claim was filed prior to confirmation and argues that, under Adair, when a proof of claim is filed prior to confirmation and the confirmation order is entered without objection by the debtor to the claim, the debtor is precluded from objecting to the creditor's claim thereafter.

In Adair, an individual who had previously filed a Chapter 13 case and had a plan confirmed subsequently sued under the Fair Debt Collection Practices Act, alleging that one of his creditors had overvalued collateral securing its claim in the Chapter 13 case. The Seventh Circuit Court of Appeals held that the former debtor's suit was barred under the doctrine of issue preclusion and refused to allow the debtor to file "a post-

confirmation collateral action" that called the proof of claim into question. Adair, 230 F.3d at 895. The court based its ruling on the fact that the debtor had notice of the proof of claim prior to confirmation, but chose not to object to it. Id., at 894. Citing decisions from other circuits that "once a bankruptcy plan is confirmed, its terms are not subject to collateral attack," the Adair court concluded:

[W]hen a proof of claim is filed prior to confirmation, and the debtor does not object prior to confirmation, the debtor may not file a post-confirmation collateral action that calls into question the proof of claim.

Id., at 894-95. Otherwise, the court stated, to allow collateral attacks on such claims "would give debtors an incentive to refrain from objecting in the bankruptcy proceeding and would thereby destroy the finality that bankruptcy confirmation is intended to provide." Id. at 895.

The debtors maintain that Adair is distinguishable from the present case because they objected to Onyx's claim within the time allowed for objecting to claims in the bankruptcy case itself rather than attacking the claim in a collateral action filed after the case was closed. This argument, however, overlooks the basis of the court's ruling in Adair. The underlying theme of Adair is one of equity and fairness, as evidenced by the court's concern that debtors have adequate time

to prepare an objection to a claim filed prior to confirmation and that creditors filing such claims be assured of finality once such notice and opportunity has been provided. See id. at 894 nn.4 & 5, 895.

Although the debtors here, unlike in Adair, objected to Onyx's claim within the bankruptcy context, they were, as in Adair, "put on notice" of Onyx's proof of claim prior to confirmation, but "chose not to object to it." Adair, at 894. Then, after a hiatus of almost a year and a half, the debtors objected to Onyx's claim, alleging that the value of the collateral at the time of filing was considerably lower than that stated by Onyx. Given the Adair court's rationale that, when a claim is filed prior to confirmation, a debtor must act promptly to have the claim determined or be foreclosed from challenging the claim following confirmation, the Court finds no grounds, on the facts of this case, to allow the debtors to object to Onyx's claim at this time. The confirmation order determined the parties' rights as they existed at that time, and despite being put on notice of Onyx's claim prior to confirmation, the debtors made no effort to challenge such claim or bring the claims issue before the Court for determination.

This does not mean, however, that Onyx's claim must be allowed as filed in the amount of \$26,263.28, as Onyx was also

put on notice that the debtors disputed this amount by the terms of the debtors' Chapter 13 plan, which estimated the value of Onyx's claim at \$20,450.00, an amount substantially less than Onyx's filed claim. The debtors' plan was not silent regarding Onyx's claim but specifically listed an estimated amount of Onyx's claim. Onyx cannot say it relied on its filed claim to its detriment or that it was prevented from objecting to confirmation of the debtors' plan because it assumed the debtors had no objection to the value stated in its claim. Thus, while the debtors were remiss in not objecting to Onyx's claim, Onyx was likewise remiss in failing to object to confirmation of the debtors' plan, which would have brought the issue of the value of Onyx's claim before the Court for determination.

Under this scenario, equity and justice require that both parties be precluded from changing their positions at this time. Onyx relied on the amount of its filed claim at its peril, choosing to ignore the value stated in the debtors' plan, while the debtors made no effort to challenge the value asserted by Onyx in its filed proof of claim. Accordingly, the Court finds that Onyx's claim should be allowed in the amount of \$20,263.28, the amount initially set forth in the debtors' plan. The Court, therefore, overrules the debtors' objection to Onyx's claim, but determines the value of Onyx's claim to be \$20,263.28. The

trustee shall pay this claim accordingly.

SEE WRITTEN ORDER.

ENTERED: July 28, 2003

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE